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U.S. DISTRICT COURT E.D.N.Y.

★ JAN 25 2012 ★

LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEE R. ELLIS,

Plaintiff,

-against-

ORDER
11-cv-0771(SJF)(AKT)

CYGNUS ENTERPRISES, LLC d/b/a
THE MILL HOUSE INN,

Defendant.

-----X
FEUERSTEIN, J.

Pending before the Court is the Report and Recommendation of Magistrate Judge A. Kathleen Tomlinson ("the Report"), dated January 3, 2012, recommending, *inter alia*, that plaintiff's motion to strike defendant's sixth affirmative defense be granted to the extent of striking paragraph 44 of defendant's amended answer and that plaintiff's motion otherwise be denied. No objections have been filed to the Report. For the reasons stated herein, the Report of Magistrate Judge Tomlinson is accepted in its entirety.

I

Rule 72 of the Federal Rules of Civil Procedure permits magistrate judges to conduct proceedings on dispositive pretrial matters without the consent of the parties. Fed. R. Civ. P. 72(b). Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a

magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error apparent on the face of the record. See Fed. R. Civ. P. 72(b); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff'd, 305 Fed. Appx. 815 (2d Cir. Jan. 1, 2009); Baptichon v. Nevada State Bank, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004), aff'd, 125 Fed.Appx. 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II

No party has filed any objections to Magistrate Judge Tomlinson's Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Tomlinson's Report as an order of the Court. For the reasons set forth in the Report, plaintiff's motion to strike defendant's sixth affirmative defense is granted to the extent that paragraph 44 of the amended answer is stricken and the motion is otherwise denied.

SO ORDERED.

15/ SANDRA J. FEUERSTEIN
/ U

SANDRA J. FEUERSTEIN
United States District Judge

Dated: January 25, 2012
Central Islip, New York